

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:19-CV-48-BO

KENNETH S. GRABARCZYK, on)
behalf of himself and others similarly)
situated,)
Plaintiff,)
v.)
JOSHUA STEIN, Attorney General of the)
State of North Carolina, in his official)
capacity; BOB SCHURMEIER, Director)
of the North Carolina State Bureau of)
Investigation, in his official capacity; SEAN)
BOONE, District Attorney of Alamance)
County, North Carolina, in his official)
capacity;)
Defendants.)

ORDER

This cause comes before the Court on plaintiff's motion for attorney fees. [DE 62]. Plaintiff has also filed a motion for bill of costs. [DE 63]. Defendants request that the motion for attorney fees be held in abeyance pending their appeal of this Court's judgment. [DE 70]. Plaintiff concurs that the Court should hold the final award of fees in abeyance. [DE 71].

If an appeal of the merits of an action is taken and a motion for attorney fees is pending, a district court may rule on the motion for attorney fees, defer its ruling, or deny the motion without prejudice and direct that it be refiled after resolution of the appeal. Fed. R. Civ. P. 54(d) advisory committee's note (1993 amendment); *see also Tancredi v. Metro. Life Ins. Co.*, 378 F.3d 220, 226 (2d Cir. 2004). A district court may prefer to defer consideration of a motion for attorney fees until the appeal has been resolved where the fee claim either involves substantial issues or is likely to be affected by the court of appeals' decision. *Certusview Techs., LLC v. S & N Locating Servs., LLC*, No. 2:13CV346, 2015 WL 3466842, at *2 (E.D. Va. June 1, 2015) (citing Fed. R. Civ. P. 58 advisory committee's notes (1993 amendments)).

As the parties are in agreement that the Court should defer its consideration of the motion for attorney fees pending appeal, the Court DENIES the motion for attorney fees as well as the motion for bill of costs [DE 62 & 63] WITHOUT PREJUDICE to refiling within fourteen days of the resolution of the appeal. The parties may incorporate by reference the instant filings if appropriate.

SO ORDERED, this 15 day of July, 2020.


TERRENCE W. BOYLE
CHIEF UNITED STATES DISTRICT JUDGE